

DRAFT

Town of Newport, New Hampshire
15 Sunapee Street
Newport, NH 03773

Re: Municipal Wastewater Treatment Facility
20 Putnam Road, Newport, NH
NPDES Permit No. NH0100200

**ADMINISTRATIVE ORDER
By CONSENT**

No. 15-#### WD

A. INTRODUCTION

This Administrative Order by Consent is issued by the New Hampshire Department of Environmental Services, Water Division to, and with the consent of, the Town of Newport, pursuant to RSA 485-A:22. This Administrative Order by Consent is effective upon signature by both parties.

B. PARTIES

1. The Department of Environmental Services, Water Division (“DES”), is a duly- constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive in Concord, New Hampshire.
2. The Town of Newport, New Hampshire is a duly-constituted municipality of the State of New Hampshire having a mailing address of 15 Sunapee Street, Newport, NH 03773.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 485-A:13 and related sections, DES regulates the discharge of pollutants to surface waters under a permit system. As part of this program, the Commissioner of DES has adopted NH CODE ADMIN. RULES Env-Wq 301 relating to permits, and has adopted NH CODE ADMIN. RULES Env-Wq 1700 to establish water quality standards for the state’s waters.
2. The Town of Newport owns and operates a wastewater treatment facility (“WWTF”) located at 20 Putnam Road, in Newport, New Hampshire.
3. Pursuant to RSA 485-A:13, I(a) it shall be unlawful for any person or persons to discharge or dispose of any sewage or waste to a surface water or groundwater of the state without first obtaining a written permit from DES.
4. Operation of the WWTF in Newport is permitted under the terms of federal National Pollutant Discharge Elimination System (“NPDES”) permit number NH0100200, issued by the United States Environmental Protection Agency (“EPA”) to Newport on April 18, 2007 (effective July 1, 2007). NPDES permit #NH0100200 was adopted as a State discharge permit under RSA 485-

A:13, I(a). The federal and state permits are collectively referred to hereinafter as the “NPDES Permit.”

5. Pursuant to New Hampshire Laws of 1967, Chapter 311:1, the Sugar River and its tributaries are classified as Class B waters.

6. Pursuant to RSA 485-A:8, II, there shall be no disposal of sewage or waste in Class B waters except those that have received adequate treatment to prevent the lowering of the biological, physical, chemical or bacteriological characteristics below those stated in RSA 485-A:8, II. Disposal of waste shall not be harmful to aquatic life or to the maintenance of aquatic life in said receiving waters. Further, Class B waters shall be acceptable for swimming, fishing and other recreational purposes; and, after adequate treatment, for use as water supplies.

7. RSA 485-A:12, I, prohibits the discharge of any sewage or wastes to a surface water in such a manner as will lower the quality of the water below the minimum requirements of the adopted classification.

8. The NPDES Permit authorizes Newport to discharge treated wastewater from its WWTF to the Sugar River, subject to specified effluent limitations, monitoring requirements, and other conditions.

9. To maintain water quality standards for the state’s waters, the NPDES Permit requires Newport to meet more stringent discharge limits than its WWTF can currently meet.

10. Pursuant to condition Part I.A.1. of the NPDES Permit, Newport may not discharge effluent with phosphorus concentrations that exceed 0.42 milligrams per liter (“mg/L”) as an average monthly value from April 1st through October 31st of each year. Pursuant to condition Part I.A.1. of the NPDES Permit, Newport may not discharge effluent with phosphorus concentrations that exceed 1.0 mg/L as an average monthly value from November 1st through March 31st each year.

11. For the monitoring period from July 2007 through February 2009, Newport violated the permitted monthly average effluent limit for phosphorus each month.

12. As a result, on March 6, 2009, EPA issued Administrative Order Docket No. 09-015 (the “EPA Order”) to the Town of Newport for, among other things, violations of the phosphorus effluent limits contained in the NPDES Permit.

13. The EPA Order established interim limitations for phosphorus in the effluent discharged by Newport. Pursuant to the EPA Order, Newport was not permitted to discharge effluent with phosphorus concentrations that exceed 3.7 mg/L as an average monthly value from April 1st through October 31st of each year. Pursuant to the EPA Order, Newport was not permitted to discharge effluent with phosphorus concentrations that exceed 3.1 mg/L as an average monthly value from November 1st through March 31st each year.

15. Pursuant to the EPA Order, Newport was required to submit to EPA an Upgrade Facilities Plan and Facilities Plan Implementation Schedule for its WWTF, to achieve compliance with the NPDES Permit as soon as practicable, but no later than October 31, 2012.

16. On September 13, 2012, Newport requested a 60-day extension of the final deadline in the EPA Order. On October 3, 2012, EPA granted Newport the requested extension.

17. The EPA Order, as amended, required Newport to achieve compliance with the effluent limits for phosphorus in the NPDES Permit by December 31, 2012. For the monitoring period from March 2009 through December 2012, Newport violated the interim monthly average effluent limit for phosphorus in October and November 2009, and in July through September 2010.

18. For the monitoring period from January 2013 through December 2014, Newport violated the permitted monthly average effluent limit for phosphorus in 17 of 24 months.

D. DETERMINATION OF VIOLATIONS

1. The Town of Newport violated Part I.A.1. of the NPDES Permit by discharging wastewater from its WWTF to Sugar River, from July 2007 through February 2009, that exceeded permitted phosphorus limits during each month.

2. The Town of Newport violated Part I.A.1. of the NPDES Permit by discharging wastewater from its WWTF to Sugar River, from January 2013 through December 2014, that exceeded permitted phosphorus limits during 17 of 24 months.

E. ORDER

Based on the above findings, DES hereby orders the Town of Newport, and Newport agrees, to undertake and complete the following actions in accordance with the time schedules specified:

1. **By March 1, 2016**, Newport shall submit to DES, for approval, an updated facility plan to upgrade its WWTF such that the Newport WWTF will be capable of consistently meeting all limits and conditions of the NPDES Permit. Newport shall include a final recommended alternative to upgrade the Newport WWTF in the updated facility plan. Newport shall include an implementation schedule with milestones and a final completion date for the final recommended alternative to upgrade the Newport WWTF in the updated facility plan.

2. **Effective immediately**, and until full compliance with the NPDES Permit is achieved, Newport shall limit the phosphorus concentrations in the effluent discharged to the Sugar River, as follows:

<u>EFFLUENT PARAMETER</u>	<u>EFFLUENT LIMIT</u> mg/L			<u>MONITORING REQUIREMENTS</u>	
	<u>Average Monthly</u>	<u>Average Weekly</u>	<u>Maximum Daily</u>	<u>Frequency</u>	<u>Sample Type</u>
Total Phosphorus (April 1 through October 31)	3.7	---	---	1/Week	Grab
Total Phosphorus (November 1 through March 31)	3.1	---	---	1/Week	Grab

3. **Effective immediately**, and until full compliance with the NPDES Permit is achieved, Newport shall submit to DES written reports on the status of its work and evaluation of its

compliance status for each quarter. The first quarterly report for 2015 is due on July 15, 2015, and the final report is due on 15 days after the close of the quarter during which full compliance with the NPDES Permit is achieved. All quarterly reports shall include, at a minimum:

- a. a brief description of work completed during the previous quarter; and,
- b. a brief description of work anticipated to be completed during the next quarter.

4. Newport shall complete all approved construction, and attain full operation, such that the effluent discharged from its WWTF to the Sugar River meets all limits and conditions of the NPDES Permit in accordance with the approved implementation schedule, including interim deadlines for milestones, and the final completion date. The approved implementation schedule required by this Administrative Order by Consent shall become a part hereof, and enforceable hereunder without further amendment to this Administrative Order by Consent.

5. Newport shall send **all** correspondence, data, reports, and other submissions made in connection with this Administrative Order by Consent to DES, and EPA, as follows:

Tracy L. Wood, P.E., WWEB
DES Water Division
P.O. Box 95
Concord, NH 03302-0095
Fax No.: (603) 271-1497
e-mail: tracy.wood@des.nh.gov

Copy to: Joy Hilton
USEPA Region 1 – New England
5 Post Office Square, Suite 100
Mail Code OES04-3
Boston, MA 02109-3912
e-mail: Hilton.Joy@epa.gov

F. CONSENT AND WAIVER OF APPEAL

1. By execution of this Administrative Order by Consent, Newport agrees that this Order shall apply to and be binding upon Newport, its officers, directors, successors and assigns, and agrees that this Order may be entered and enforced by a court of competent jurisdiction.

2. By execution of this Administrative Order by Consent, Newport waives any right to appeal this Administrative Order by Consent provided by statute, rule, or common law, including without limitation the right to appeal to the Water Council, and waives any right to object to the entry and enforcement of this order by a court of competent jurisdiction.

3. The effective date of this Administrative Order by Consent is the date on which it is signed by a duly authorized representative of the Town of Newport, and the Commissioner of DES. After such date, this Administrative Order by Consent may be amended only by written agreement signed by a duly authorized representative of the Town of Newport and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.

4. The Town of Newport shall continuously and diligently pursue implementation of the actions required in this Administrative Order by Consent. Newport shall immediately notify DES of any delays in meeting the deadlines specified in this Administrative Order by Consent. Approval of reasonable changes to the implementation schedule shall not be unreasonably withheld by DES. Failure to secure funding for the required actions or failure of a consultant to meet deadlines, in

and of itself, shall not be construed as beyond the control of the Town of Newport.

Town of Newport

DRAFT

Paul J. Brown, Town Manager
Duly Authorized

Date

NH Department of Environmental Services

DRAFT

Thomas S. Burack, Commissioner

Date

cc: DES Legal Unit

ec: Public Information Officer, DES PIP Office
K. Allen Brooks, Chief, AGO-Environmental Protection Bureau
Newport Select Board, Town Manager, and Public Works Director
Tracy Wood, P.E., NHDES
Joy Hilton, USEPA Region 1